

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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XIAO YE BAI,

Plaintiff,

v.

CALVIN JOHNSON, *et al.*

Defendants.

Case No. 2:20-cv-2192-RFB-EJY

ORDER

Before the Court are six motions: Plaintiff Xiao Ye Bai's AMENDED MOTION for Preliminary Injunctions, ECF No. 21, Plaintiff Xiao Ye Bai's MOTION for Emergency Supplemental Injunctions, ECF No. 57, Defendants' MOTION to Dismiss, ECF No. 76, the ORDER and REPORT AND RECOMMENDATION of United States Magistrate Judge, Elayna J. Youchah, ECF No. 82, Plaintiff Xiao Ye Bai's MOTION for Further Confirm the Following New Status Conference Hearing and Relevant Appointment of Counsel Progress, ECF No. 90, and Plaintiff Xiao Ye Bai's MOTION to Stay Case, ECF No. 100.

Plaintiff Xiao Ye Bai, who is incarcerated in the custody of the Nevada Department of Corrections, filed a civil rights complaint against Defendants pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendants subjected him to medical mistreatment and retaliated against him after he broke both legs and ankles jumping over a fence at Southern Desert Correctional Center. He alleges that this mistreatment and retaliation violated his constitutional rights. He is seeking monetary damages and injunctive relief.

I. Plaintiff's Injunctive Relief Motions

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." Winter v. Natural Res. Def. Council, Inc.,

1 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, a plaintiff must establish four elements:
 2 “(1) a likelihood of success on the merits, (2) that the plaintiff will likely suffer irreparable harm
 3 in the absence of preliminary relief, (3) that the balance of equities tip in its favor, and (4) that the
 4 public interest favors an injunction.” Wells Fargo & Co. v. ABD Ins. & Fin. Servs., Inc., 758 F.3d
 5 1069, 1071 (9th Cir. 2014), as amended (Mar. 11, 2014) (citing Winter, 555 U.S. 7, 20 (2008)).

6 On November 18, 2021, Plaintiff filed the instant amended motion for preliminary
 7 injunction. ECF No. 21. Plaintiff then filed a “Motion for Emergency Supplemental Injunctions”
 8 on April 22, 2022. ECF Nos. 57. At this juncture, the Court concludes that Plaintiff’s motions,
 9 requesting that he be provided with ankle surgery, pain medication, and leg and ankle braces, do
 10 not have a likelihood of success on the merits as he has received the treatment he sought. On May
 11 12, 2022, Defendants notified the Court that Plaintiff’s surgery had been approved, about the
 12 medication he was receiving, and that he had received knee and ankle braces. On June 6, 2022,
 13 Plaintiff underwent the ankle surgery. Indeed, Plaintiff has notified the Court about issues with the
 14 quality of the medication and the braces he has received. The Court, however, will not consider
 15 these issues as Plaintiff’s motions fail to raise them. Thus, Plaintiff’s motions for injunctive relief
 16 are denied without prejudice.

17 **II. July 7, 2022 Status Conference Hearing, the Pending Motions, and** 18 **Appointment of Pro Bono Counsel**

19 During the July 7, 2022 Status Conference hearing, the Court took under submission
 20 pending motions, including Defendants’ Motion to Dismiss the Second Amended Complaint
 21 (“SAC”) and Magistrate Judge Youchah’s Order and Report and Recommendation also concerning
 22 the SAC. ECF Nos. 76, 82, and 94. The Court agreed to consider Plaintiff’s request for the
 23 appointment of pro bono counsel. ECF No. 94. On July 19, 2022, Plaintiff filed a Motion “for
 24 Further Confirm the Following New Status Conference Hearing and Relevant Appointment of
 25 Counsel Progress.” ECF No. 90. The Court construes this motion as a Motion for Appointment of
 26 Counsel. Further, on September 7, 2022, Plaintiff filed a Motion to Stay Case based on the Court’s
 27 July 7, 2022 Order, following the Status Conference hearing. ECF No. 100.
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1 **IT IS THEREFORE ORDERED** that Plaintiff Xiao Ye Bai's Amended Motion for
2 Preliminary Injunctions (ECF No. 21) is DENIED without prejudice.

3 **IT IS FURTHER ORDERED** that Plaintiff Xiao Ye Bai's Motion for Emergency
4 Supplemental Injunctions (ECF No. 57) is DENIED without prejudice.

5 **IT IS FURTHER ORDERED** that Plaintiff Xiao Ye Bai's Motion for Further Confirm
6 the Following New Status Conference Hearing and Relevant Appointment of Counsel Progress
7 (ECF No. 90) is DENIED in part and GRANTED in part. The Court DENIES the request for an
8 additional hearing but GRANTS the request for the referral of this case to the pro bono program
9 for appointment of counsel.

10 **IT IS FURTHER ORDERED** that this matter is REFERRED to the PRO BONO Program
11 for the possible appointment of Pro Bono counsel.

12 **IT IS FURTHER ORDERED** that Plaintiff Xiao Ye Bai's Motion to Stay Case (ECF No.
13 100) is GRANTED. The Court will stay all pending deadlines and discovery until the scheduled
14 Status Conference. At that time, the Court will address a new schedule for discovery with the
15 parties.

16 **IT IS FURTHER ORDERED** that a Status Conference Hearing is set for November 29,
17 2022 at 9:00 a.m., by videoconference before Judge Richard F. Boulware, II. The instruction
18 regarding videoconference appearance to be issued.

19 **IT IS FURTHER ORDERED** that Defendants' motion to dismiss (ECF No. 76) is
20 DENIED without prejudice.

21 **IT IS FURTHER ORDERED** that Magistrate Judge Youchah's Order and Report and
22 Recommendation (ECF No. 82) is REJECTED without prejudice.

23
24 **DATED:** September 26, 2022



25
26 **RICHARD F. BOULWARE, II**
27 **UNITED STATES DISTRICT JUDGE**
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